

ASSEMBLY BILL

No. 1446

Introduced by Assembly Member Karnette

February 22, 2005

An act to amend Section 2912 and 5028 of the Penal Code, relating to foreign prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1446, as introduced, Karnette. Foreign prisoners.

Existing law requires foreign-born inmates subject to the jurisdiction of the Department of Corrections to be informed that they may be eligible to serve their term of imprisonment in their country of citizenship. Existing law specifies other notification requirements in this regard, and similar notification to the consul of the inmate's nation of citizenship.

This bill would instead require that the department make that notification to inmates who are nationals of countries with which the United States has a prisoner transfer treaty. The bill would also provide that as long as the inmate is in a facility operated by the Department of Corrections, the inmate would have access to his or her consular officials, and the officials would have access to the inmate, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2912 of the Penal Code is amended to
2 read:

1 2912. (a) Under its Foreign Prisoner Transfer Program, the
2 Board of Prison Terms shall devise a method of notifying each
3 ~~foreign-born~~ inmate in a prison or reception center operated by
4 the Department of Corrections *who is a national of a country*
5 *with which the United States has a prisoner transfer treaty* that
6 he or she may be eligible to serve his or her term of
7 imprisonment in his or her ~~nation of citizenship as provided in~~
8 ~~federal treaties~~ *country of nationality and of the substance of the*
9 *relevant treaty.*

10 (b) (1) The Board of Prison Terms shall actively encourage
11 each eligible ~~foreign-born~~ *national* inmate to apply for return to
12 his or her ~~nation of citizenship~~ *country of nationality* as provided
13 in ~~federal~~ *prisoner transfer* treaties and shall provide quarterly
14 reports outlining its efforts under this section to the Chairperson
15 of the Joint Legislative Budget Committee and the chairperson of
16 each fiscal committee of the Legislature.

17 (2) The Board of Prison Terms shall adopt the model program
18 developed by the State of Texas for encouraging participation in
19 the ~~federal repatriation~~ *prisoner transfer* program where
20 appropriate.

21 SEC. 2. Section 5028 of the Penal Code is amended to read:

22 5028. (a) Upon the entry of any person who is ~~currently or~~
23 ~~was previously a foreign national~~ *a national of a country with*
24 *which the United States is a party to an international agreement*
25 *relating to a prisoner transfer* into a facility operated by the
26 Department of Corrections, the Director of Corrections shall
27 inform the person that he or she may ~~apply~~ *be eligible* to be
28 transferred to serve the remainder of his or her prison term in his
29 or her ~~current or former nation of citizenship. The director~~
30 *country of nationality and* shall inform the person *of the*
31 *substance of the applicable prisoner transfer treaty* so that he or
32 she may ~~contact his or her~~ *request notification to the inmate's*
33 *consulate of the inmate's detention* and shall ensure that, if
34 ~~notification is requested by the inmate requests that notification,~~
35 that the inmate's nearest consulate or embassy is *in fact* notified
36 without delay of his or her ~~incarceration~~ *detention. For so long*
37 *as the inmate remains in a facility operated by the Department of*
38 *Corrections, the director shall permit the inmate to communicate*
39 *with his or her consular officials and shall permit consular*

1 *official to have access to the inmate consistent with applicable*
2 *treaties.*

3 (b) Upon the request of a foreign consulate representing a
4 ~~nation that requires mandatory notification under Article 36 of~~
5 ~~the Vienna Convention on Consular Relations Treaty listed in~~
6 ~~subdivision (d) of Section 834e,~~ *country with which the United*
7 *States is a party to an international agreement requiring*
8 *consular notification of every arrest involving a national of that*
9 *country, that is, a “mandatory notification country,” the*
10 Department of Corrections shall provide the foreign consulate
11 with a list of the names and locations of all inmates in its custody
12 that have ~~self-identified that nation as his or her place of birth~~
13 *identified themselves as nationals of the country making the*
14 *request.*

15 (c) The Department of Corrections shall implement and
16 maintain procedures to process applications for the transfer of
17 prisoners to their ~~current or former nations of citizenship~~
18 *countries of nationality* under subdivision (a) and shall forward
19 all applications to the Governor or his or her designee for
20 appropriate action.